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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A.No.127 of 1992.

Dated of decision: 14.2.92

Shri S.P.Sharma

...Applicant

Versus

Union of India & Others

...Respondents

CORAM:

THE HON'BLE MR. J.P.SHARMA, MEMBER, (J).

Counsel

Mrs. Pushpa Raja

...For the applicant

Shri M.L.Verma

...For the respondents

1. Whether Reporters of local papers may be allowed to see the Judgement? y
2. To be referred to the Reporter or not? y

JUDGEMENT

The applicant is working as Assistant Director (Horticulture), C.P.W.D., New Delhi, has assailed the Order of his transfer dated 31.12.1991 to Hyderabad in Horticulture Sub Division, CPWD against an existing vacancy.

2. The applicant claims the relief that the impugned order dated 31.12.91, so far as it relates to transfer of the applicant, be quashed. The facts of the case are that the applicant joined Central Government Service in the PWD in 1965 and has been since promoted to the post of Assistant Director in 1981. As a matter

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of policy, according to the applicant, whenever any direct recruit takes place to the post of Assistant Director(Horticulture), the posting is given to out stations, that is, outside Delhi. Such posts are available in cities of Indore, Nagpur, Bombay and Hyderabad. While the applicant was on casual leave from 24-12-91 till 30-12-91 and has fallen ill and proceeded on medical leave since 31.12.91, the applicant received the transfer order on 6-1-1992 informing him that he has been relieved in absentia on the afternoon of 31.12.91 to enable him to join at Hyderabad. The applicant did not make any representation because of unpleasant attitude of the administration. So, he has directly filed this application before the Tribunal. The case of the applicant is that he understood that a fresh recruit, Shri S.C.Dixit was originally ordered to be posted at Hyderabad but now has been directed to report for duty at Delhi and in order to accommodate Shri Dixit at Delhi, the applicant has been made scape goat and transferred to Hyderabad. It is also stated that if at all there should be any need to post any one from Delhi, then only the senior Assistant Director in the same station should be transferred to Hyderabad. It is also stated that there are at least 4 Assistant Directors in Delhi who have greater station seniority. It is further

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stated that the applicant has applied for deputation post in the I.A.A.I. He has reason to believe that he has been selected to the post. So, on this account also, he has claimed to remain at Delhi so that he would be able to take up the post on receipt of the requisite offer of appointment.

3. The respondents contested the application and stated that the transfer is an incidence of service and as the same was made in the administrative interest, the same order cannot be challenged in court. As such, no cause of action has accrued in favour of the applicant. It is further stated that the applicant has not made any representation to the Department before coming to the Tribunal. It is further stated that the applicant was on foreign assignment to IAAI, Kathmandu from 15-3-77 to 1-10-81 and the period spent on foreign assignment is treated as a period spent on duty and as such, the applicant is continuously working in Delhi since 1965. The applicant has been transferred outside for having his longest stay in Delhi. The transfer has been made by the Posting/Transfer Committee after taking into consideration the merits of the case. Posting is done out of station on the basis of maximum stay in Delhi and the respondents have cited

the instances of S/Shri Jeet Singh, Gulab Singh Yadav, Bhihamjit Singh, Santosh Kumar, B.N.Srivastava, G.S. Verma, M.S.Dagar, S.P.Verma, S.K.Tyagi and H.R.Warkde. Thus, the contention of the applicant that there was no transfer to out stations in the past few years is not correct. Shri P.L.Grover was promoted from the level of Section Officer(Horticulture) w.e.f.30-12-91. Shri S.P.Sharma stood transferred from Delhi to out station on the basis of total maximum stay in Delhi to the post of SO(H) and AD(H) both. There is no mala fide intention and the transfer done is in public interest in pursuance of the norms laid down. Initially Shri Dixit was given posting orders for Hyderabad and since Shri Dixit was taking time to join his duties in CPWD and the work at Hyderabad was suffering badly, it became very essential to post one Assistant Director(H) to outside Delhi. It is further stated that it is figment of imagination of the applicant that he has been selected for deputation post in I.A.A.I., as no such orders have been received as yet.

4. In the rejoinder, the applicant stated that the representation submitted by him to the Chief Engineer was returned by the Deputy Director(H)

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stating "it is regretted that no action could be taken by this Division at this stage as you are relieved in absentia vide this office letter of even number dated 31.12.91."

5. I have heard the learned counsel for the parties at length and have gone through the records of the case.

6. As regards the preliminary objection that the applicant has not exhausted departmental remedy, the applicant has clearly stated in the rejoinder that since he has been relieved, no action can be taken on his representation. The most important fact stated in reply by the respondents in para 5.2 at page 13, it is clearly stated that Shri Dixit was given orders for posting at Hyderabad. Since Shri Dixit, according to the respondents, was taking time to join his duties in CPWD and the work at Hyderabad was suffering badly, it became very essential to post one Assistant Director (Horticulture) who was due for transfer outside Delhi. This statement of fact is relied by the learned counsel for the applicant that in order to accommodate Shri Dixit, he has been transferred to Hyderabad. Had there been no posting order for Shri Dixit to Hyderabad, then the matter would have been different. In the case of

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E.P.ROYAPPA VERSUS STATE OF TAMIL NADU, 1974(4) SCC p.3,
it has been held "It is an accepted principle that in
public service, transfer is an incidence of service.....
The govt. is the best judge to decide how to distribute
and utilise the services of its employees. However,
this power must be exercised honestly, bonafide and
reasonably. It should be exercised in public interest.
If the exercise of power is based on extraneous
considerations or for achieving an alien purpose or an
oblique motive, it would amount to malafide and
colourable exercise of power...." It has been further
held that a transfer is malafide when it is not
made for ^{professed} purposes as such in normal course or
in public or administrative interest or in exigencies of
service but for other purposes, i.e., to accommodate
another person for undisclosed reasons. The respondents
in their counter have also stated that normally, option
of officers is obtained to find out a willing officer
for posting outside Delhi and in case of direct recruits,
they can be posted anywhere in India in CPWD, being an
All-India Service. It is further stated in the
counter that the applicant was temporarily posted as
P.A.(Technical) to Additional Director(H) vide Order
dated 25-10-91, but he was reluctant to join duty for

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the reasons best known to him and the orders were cancelled by the Order dated 11-11-91.

7. In the rejoinder to para 4.2, it is stated by the applicant that the respondents themselves cancelled the transfer order as PA(Tech.) to Additional Director(H). Thus, from the above facts, it is made clear that there was no normal vacancy at Hyderabad and that has been caused only by diverting Shri Dixit to Delhi. Thus, there is no judiciousness or justness in the transfer of the applicant to Hyderabad either on administrative ground or in public interest.

8. The learned counsel for the applicant has also referred to the case of M.C.NIGAM VS. UNION OF INDIA in para 5.6 of the application. Though the facts of every case differ but the facts remain that Dr. Nigam was also transferred in haste and relieved, did suggest that Dr. Nigam was not transferred in public interest but may be to accommodate some one, also this position was not clear in that case. However, in the present case, there is clear allegation by the applicant and there is admission by the respondents to the effect that since Shri Dixit was taking time to join at Hyderabad, the applicant was transferred from Delhi.

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9. The learned counsel for the applicant has also referred to the case of B. VARADHA RAO VS. STATE OF KARNATAKA (1986 ATC 558 SC), where the Hon'ble Supreme Court held "It is no doubt true that if the power of transfer is abused, the exercise of the power is vitiated."

10. The learned counsel for the respondents, however, placed reliance on the decision of the Hon'ble Supreme Court in the case of STATE OF ANDHRA PRADESH VS. SADANANDAM where it is held that the transfer is the policy decision falling exclusively within the purview of the executive. The facts of that case are totally different. Inasmuch as in the present case, the transfer has been effected in the middle of the academic session and consequently, there is motive behind transfer. The Order dated 27/30-12-1991, which is a transfer order of the applicant, in para 2 therein, it is stated "The Director-General of Works is also pleased to state that Shri S.C.Dixit, a fresh recruit, ordered to be posted at Horticulture Sub-Division, Hyderabad vide this Directorate's Order dated 28-8-91, to report for duty in Delhi." Thus, it is evident that before December, 1991, the applicant was not being transferred to Hyderabad but it was only after Shri Dixit failed to join at Hyderabad, the applicant

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was transferred to Hyderabad and Shri Dixit was allowed to join at Delhi. Thus, it is evident from the record that the transfer has been made to accommodate a fresh recruit who has joined the service for the first time and has an All India Service Liability.

11. It is a fact that Shri Grover was promoted from the grade of S.O. to the grade of A.D.(H); was allowed to join at Delhi in the vacancy to be caused by the transfer of the applicant but that will not by itself make the transfer of the applicant in public interest.

12. The haste by which the applicant was relieved while he was on leave also goes to some extent to establish that the respondents were eager to fill up the vacancy, irrespective of the fact that the applicant would be able to discharge his duties in Hyderabad since he had proceeded on medical leave within the knowledge of the respondents. It is not denied by the respondents that the applicant was on casual leave for a short period of 4 or 5 days when this transfer order has been passed on 30th of December, 1991.

13. The learned counsel for the respondents have relied on the case of GUJARAT ELECTRICITY BOARD VS.



ATMA RAM SUNGONAL, reported in 1989(2) SCC p.602.

The facts of that case are totally different when taken in context with the present case. In the present case, there is a clear motive behind transfer of the applicant from Delhi to Hyderabad.

14. The learned counsel for the respondents argued that the applicant has the longest stay since 1965 at Delhi and even for 3 years, he has been on an assignment in Nepal. So, the transfer has been effected on the basis of longest stay and taking into account the earlier stay in the grade of Section Officer. This fact may be true but at the same time the manner in which the order of transfer has been passed, there is no doubt that it has been effected only to accommodate a third person and as such, the Supreme Court's judgment in H.N.KIRTANIA, (JUDGEMENTS/TODAY 1989(3) SC p.131) and GUJARAT ELECTRICITY BOARD (supra) has no application in the present case.

15. In view of the above discussion, the application is allowed and the impugned order of transfer of the applicant from Delhi to Hyderabad is set aside and quashed leaving the parties to bear their own costs.

J. P. Sharma

(J.P.SHARMA)
MEMBER (JUDICIAL)

14.2.92

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